

**FILED**

NOV 30 2010

BEFORE THE BOARD OF OIL, GAS AND MINING

DEPARTMENT OF NATURAL RESOURCES

SECRETARY, BOARD OF  
OIL, GAS & MINING

STATE OF UTAH

IN THE MATTER OF THE )  
APPLICATION OF WESTWATER )  
FARMS, LLC FOR ADMINISTRATIVE )  
APPROVAL OF THE HARLEY DOME )  
1 SWD WELL LOCATED IN SECTION )  
10, TOWNSHIP 19 SOUTH, RANGE 25 )  
EAST, S.L.M., GRAND COUNTY, )  
UTAH, AS A CLASS II INJECTION )  
WELL )

MEMORANDUM  
IN OPPOSITION TO  
MOTION TO CONTINUE  
HEARING  
AND  
MOTION FOR EXPEDITED  
CONSIDERATION

Docket No. 2010-029  
Cause No. UIC-358.1

WESTWATER FARMS, LLC, Petitioner, by and through its undersigned attorneys,  
hereby files its Memorandum in Opposition to the Motion to Continue Hearing filed by Living  
Rivers on November 24, 2010, and Westwater Farms, LLC's Motion for Expedited Consideration.

**MEMORANDUM IN OPPOSITION TO MOTION**  
**TO CONTINUE HEARING**

**STATEMENT OF FACTS**

1. Westwater Farms, LLC ("**Westwater**") originally filed its application for administrative approval of the Harley Dome #1 SWD Well the ("**Subject Well**") located in the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 10, Township 19 South, Range 25 East, S.L.M., Grand County, Utah as a Class II underground injection well for the disposal of produced water on May 26, 2009. The original application was amended and augmented with supplemental information filed with the Division of Oil, Gas and Mining (the "**Division**") during the summer of 2010 (together with the original application, the "**Application**").

2. On August 23, 2010, the Division published notice of the Application in the Salt Lake Tribune, Deseret News, and the website utahlegals.com. In addition, on August 26, 2010, the Division published notice of the Application in the Times-Independent.

3. Following publication of the notice of the Application, the Division received an objection to the Application by email dated September 3, 2010, from John Weisheit on behalf of the Living Rivers organization.

4. Based in part on the protest filed by Living Rivers, Westwater filed its Request for Agency Action (the “**Request**”) in this Cause and a motion for the Division to convert the initial informal adjudicative proceeding to a formal adjudicative proceeding. The Request was emailed to Mr. Weisheit on October 18, 2010. The purpose of the Request was to set the matter for hearing by the Board at the Board’s regularly scheduled hearing on December 8, 2010. The Presiding Officer in the Division’s informal proceeding signed the Order Converting Informal Adjudicative Proceeding on November 8, 2010. That order was mailed to Living Rivers on the same day.

5. Living Rivers first appeared in this Cause on November 24, 2010, two weeks before the Board’s December 8, 2010 hearing and the last day to file an objection or response to Westwater’s Request. Living Rivers, however, did not file any objections. Living River’s counsel filed a Notice of Appearance of Counsel and its Motion to Continue Hearing on Notice of Agency’s Action (the “**Motion to Continue**”).

6. Living Rivers is familiar with the Board’s hearing process and rules. Living Rivers already has a matter before the Board to be heard at the Board’s December 8, 2010 hearing.

(Docket No. 2010-027; Cause No. M/047/0090 A; Item No. 6 on the Board’s December Agenda)

7. Concurrent with the proceeding before the Board wherein Westwater is seeking approval of its UIC Application, Westwater is also seeking approval of a

Conditional Use Permit from Grand County, Utah, regarding the construction of the water treatment facilities associated with the operation of the Subject Well. The Grand County Planning Commission is set to consider Westwater's Conditional Use Permit during the evening of December 8, 2010. The Board's approval of the UIC Application is a condition to Grand County's approval of the Conditional Use Permit.

8. Continuing the hearing in this Cause until the Board's January 26, 2011 hearing will cause an extraordinary seven week delay in the hearing.

9. Continuing the hearing until the Board's January 2011 hearing will delay the Grand County Planning Commission's consideration of Westwater's Conditional Use Permit until, at least, its February hearing.

10. Westwater already has signed Master Service Contracts with several oil and gas producers providing for the injection of produced water into the Subject Well. Delaying Westwater's ability to provide injection or disposal services under those contracts puts the contracts at risk because the companies may seek injection or disposal services elsewhere, and could result in Westwater losing up to \$50,000 per day or (\$1,000,000 per month) in lost revenues.

### **ARGUMENT**

#### **LIVING RIVERS HAS NOT PROVIDED GOOD CAUSE TO CONTINUE THE DECEMBER 8, 2010 HEARING.**

Living Rivers' stated basis for continuing the hearing in this Cause from the Board's regularly scheduled December 8, 2010 hearing to the Board's January 26, 2011 hearing—a seven week delay—is to “permit [] Mr. Weisheit and his counsel appropriate time to prepare his materials and make arrangements to attend the hearing.” Living Rivers admits it failed to prepare its case

within the time allowed under the Board's rules. Living Rivers does not complain that it did not receive timely notice of the Board's December 8, 2010 hearing. Living Rivers does not explain why it needs additional time to prepare its materials or why it retained legal counsel the week objections or responses were due to be filed with the Board. Mr. Weisheit has been aware of the Application since at least September 3, 2010 (the date he emailed Living Rivers' protest of the Division's informal proceeding), and has had notice of Westwater's Request since October 18, 2010 (the date the Request was emailed directly to him). Living Rivers is asking the Board to give it more time to do what it already should have done under the Board's rules. In fact, because the Board traditionally combines its November and December hearings, Living Rivers already has had more than the normal time permitted for an interested party to file its objections or response to a Request for Agency Action. Living Rivers' Motion to Continue is silent as to why it could not comply with the Board's rules.

Typically, UIC applications are administratively approved by the Division. Westwater's UIC Application is before the Board only because protests were filed in connection with the Division's published notice of the Application. Those protests have lengthened the consideration process of the Application by nearly three months. Now Living Rivers seeks an additional nearly two month delay without providing an explanation why it could not prepare its case in the normally allotted time. Westwater's UIC Application and other materials have been available from the Division since the summer of 2010. The Board's rules and procedures are readily available online. The Board's consideration of Westwater's UIC Application is not a complicated matter. Living Rivers' failure to timely prepare its case is its own fault.

Living Rivers failed to timely retain legal counsel even though Living Rivers is fully aware of the Board's hearing processes and procedures and the need to file a timely response to

Westwater's Request. Living River's knowledge of the Board's procedures is evidenced by the fact that it has a matter currently pending before the Board that is to be heard at the Board's December hearing. A continuance is not justified where a party delays preparing its case, including the retention of legal counsel, without reasonable justification. A continuance sought by an opposing party must be based on a showing of good cause. Living Rivers has failed to justify its Motion to Continue by making a showing of good cause. Therefore, Living Rivers' Motion to Continue should be denied.

**CONTINUING THE HEARING  
WILL PREJUDICE WESTWATER.**

Concurrent with seeking the Board's approval of its UIC Application, Westwater also is seeking approval of a Conditional Use Permit ("CUP") from Grand County, Utah. In fact, Westwater's CUP application is set to be heard by the Grand County Planning Commission (the "**Planning Commission**") in Moab, Utah, during the evening of December 8, 2010, the same day as the Board's hearing. The Planning Commission's recommendation for the approval of the CUP by Grand County is contingent upon the Board's approval of Westwater's UIC Application. If the Board reschedules its hearing on the UIC Application until its January 26, 2011 hearing, the next opportunity for Westwater's CUP application to come before the Planning Commission is during February 2011. In effect, the nearly two month delay in the Board's proceeding translates into another two month (or greater) delay in the CUP proceedings. Living River's Motion to Continue, if granted, would seriously affect Westwater beyond the Board's proceeding.

Westwater already has Master Service Contracts in place with several oil and gas producers that have agreed to dispose of their produced water into the Subject Well. Westwater estimates that those contracts are worth approximately \$50,000 per day (or \$1,000,000 per month) in revenues. If Westwater is delayed in being able to perform under such contracts because the hearing before the

Board is moved to the end of January 2011 (and the hearing before the Planning Commission is correspondingly moved to February), Westwater may lose several million dollars in revenues. Moreover, if Westwater cannot perform under the contracts, the energy companies—which will have produced water that they need to dispose of during January and February (and perhaps March)—may go elsewhere to find injection or disposal services, putting Westwater's service contracts at risk.

The impact of a delay on Westwater is real and serious. The equities weigh heavily in Westwater's favor and do not support granting a continuance to allow Living Rivers additional time to prepare its case, especially when it already has had more time to prepare than is normally available under the Board's rules. The consideration of Westwater's UIC Application already has been significantly delayed, apparently for no good reason. It should not be delayed any further. The Board should deny the Motion to Continue.

**WESTWATER FARMS, LLC'S**  
**MOTION FOR EXPEDITED CONSIDERATION**

The Board should consider Living Rivers' Motion to Continue Hearing on Notice of Agency's Action on an expedited basis. Living Rivers, at nearly the last minute, has moved the Board to continue the hearing in this Cause from the Board's regularly scheduled December 8, 2010 hearing to the Board's January 26, 2011 regularly scheduled hearing. Westwater opposes the Motion to Continue. Both of the parties, as well as the Division and the Board, need to know as soon as possible whether they need to continue to prepare and make arrangements for the Board's December 8, 2010 hearing. It is appropriate for the Board to consider the Motion to Continue in an expeditious manner prior to the December 8, 2010 hearing date. Therefore, Westwater hereby respectfully moves the Board to expedite its consideration of Living Rivers' Motion to Continue and to advise the parties of its decision as soon as is practicably possible.

For the reasons stated above, the Board should deny Living Rivers' Motion to Continue after considering it on an expedited basis.

Dated this 30th day of November 2010.

VAN COTT, BAGLEY, CORNWALL & McCARTHY

By 

Thomas W. Clawson  
Attorneys for Petitioner  
36 South State Street, Suite 1900  
Salt Lake City, Utah 84111  
Telephone: (801) 532-3333

**CERTIFICATE OF SERVICE**

I hereby certify that on this 10th day of August, 2010, I caused a true and correct copy of the foregoing Memorandum in Opposition to Motion to Continue Hearing and Motion for Expedited Consideration to be served via U.S. Mail, properly addressed with postage prepaid, upon each of the following:

Patrick A. Shea  
Attorney for Living Rivers  
215 South State St., Ste. 200  
Salt Lake City, Utah 84111  
and via email to [pas@patrickashea.com](mailto:pas@patrickashea.com)

Jacque M. Ramos  
J. Ramos Law Firm  
2709 South Chadwick St.  
Salt Lake City, Utah 84106

Mike Johnson  
Assistant Utah Attorney General  
Counsel for Utah Board of Oil, Gas and Mining  
1594 West North Temple, Ste. 300  
Salt Lake City, Utah 84118  
[mikejohnson@utah.gov](mailto:mikejohnson@utah.gov)

Steven F. Alder  
Assistant Utah Attorney General  
Counsel for Utah Board of Oil, Gas and Mining  
1594 West North Temple, Ste. 300  
Salt Lake City, Utah 84118  
[stevealder@utah.gov](mailto:stevealder@utah.gov)

A handwritten signature in blue ink, appearing to read "James W. Alder", is written over a horizontal line.